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December 11, 2009

DOCKET

08-AFC-13

DATE DEC 11 2009

RECD. DEC 11 2009

California Energy Commission
Attn: Docket No. 08AFC13
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: 08AFC13- SES Solar One

Dear Docket Clerk:

Enclosed are an original and one copy of CURE letter (12/11/09) re CEQA Requirements for Study of Stirling Solar One Transmission Upgrades and Pisgah Substation Expansion. Please process the document, conform a copy and return the copy in the envelope provided.

Thank you for your assistance.

Sincerely,



Loulana A. Miles

:bh
Enclosures

2309-033a

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December 11, 2009

SENT BY EMAIL AND U.S. MAIL

Caryn J. Holmes
Staff Counsel IV
California Energy Commission
1516 9th St.
Sacramento, CA 95814
cholmes@energy.state.ca.us

Re: **CEQA Requirements for Study of Stirling Solar One Transmission
Upgrades and Pisgah Substation Expansion**

Dear Ms. Holmes:

The California Unions for Reliable Energy ("CURE") submit this letter concerning the need for the Energy Commission, as lead agency under the California Environmental Quality Act ("CEQA"), to study the transmission upgrades needed for the functioning of the Solar One Project in one integrated environmental review. These transmission upgrades include constructing a 67-mile Lugo to Pisgah Transmission Line through areas of protected desert resources, a 275 MW temporary interconnection, and expanding the Pisgah Substation from five acres to forty acres. As has been clearly stated by the Energy Commission Staff, these transmission upgrades are part of the Solar One Project. Thus, the impacts associated with these upgrades must be analyzed, and avoided or mitigated, as feasible. Unfortunately, Tessera Solar/Stirling Energy Systems has failed to provide the environmental information necessary for a CEQA analysis of the impacts associated with these transmission upgrades.

I. BACKGROUND

In an October, 2009 status report, Commission Staff stated that the Pisgah Substation expansion and transmission upgrades are part of the "whole of the project" for purposes of CEQA.

The California Public Utilities Commission (CPUC) has jurisdiction over any proposed changes to the Pisgah-Lugo line, but the Energy Commission must

analyze all available information about the upgrades as they are part of the “whole of the project” which the Energy Commission, as Lead Agency, must review. Staff anticipates drafting data requests specific to the needed transmission upgrades, basing the requests on information needed from the applicant to supplement the information presented in Appendix EE of the Application for Certification (AFC). Staff and BLM have identified this process in conversations with the applicant, SCE and the CPUC.¹

Although the Energy Commission Staff is clear that the transmission upgrades are a part of the whole of the action under CEQA and requested additional data on the Project back in October, inexplicably, the Applicant has failed to provide the data necessary to take a hard look at the impacts of these transmission upgrades. In response to CURE data requests seeking information about the transmission upgrades, the Applicant has stated that “[t]he potential Project impacts cannot be assessed at this time because a final Project design has not been engineered. While the majority of the alignment is proposed along existing transmission lines with existing access roads, portions of each alternative will require new access roads as part of the project.”²

Even though there is no question that the Solar One facility cannot operate without the transmission line improvements, the Applicant is suggesting that these improvements cannot be studied as part of the Project because the Project engineering is not completed. The Applicant is making the case that study of the Project at the Energy Commission should be put on hold to provide time for the Applicant to clarify and submit the documents necessary for a full environmental review of the transmission upgrades that will be necessary for Project operation. The Energy Commission cannot conclude the environmental study of the Solar One Project without a hard look at the impacts associated with the upgrades.

II. LEGAL REQUIREMENT TO STUDY TRANSMISSION UPGRADES IN SOLAR ONE CEQA REVIEW

CEQA defines a project as “the whole of an action” which has the potential to result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.³ The “project” refers to the activity being approved and which may be subject to several discretionary approvals by

¹ SES SOLAR ONE PROJECT (08-AFC-13) STATUS REPORT #2, Submitted by CEC Staff Project Manager Christopher Meyer, October 27, 2009.

² SES Solar One, December 3, 2009. In Response to CURE Data Requests, Set Four, number 387.

³ CEQA Guidelines § 15378.

governmental agencies. "Project does not mean each separate governmental approval."⁴ This ensures that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.⁵

Although the transmission line upgrades are within the jurisdiction of the California Public Utility Commission, the purpose and objective of these upgrades are directly related to Solar One. Under CEQA, a project "refers to the underlying activity which may be subject to approval by one or more governmental agencies; it does not refer to each of the several approvals sequentially issued by different agencies."⁶ The licensing of the Solar One power plant mandates that the transmission will be provided. Because these transmission upgrades are required for the operation of the Solar One Project, the environmental review of these components must be included in the Solar One CEQA-equivalent siting process.

Additionally, the transmission upgrades must be included in the Project Description of the Solar One Project to safeguard public participation and ensure an integrated environmental review. Courts hold that a curtailed or distorted project description may stultify the objectives of the CEQA process.⁷ "Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance."⁸ In this case, the effects of the Solar One Project cannot be examined in a vacuum but must be studied together with the full effects of the impending transmission application. There will be a number of similar and even overlapping environmental impacts of the Solar One power plant and the transmission upgrades needed for the plant, such as air quality, biology, water quality, and cultural resources that, taken together, could result in regionally significant impacts.

California courts have long upheld CEQA's mandate for lead agencies to study related infrastructure upgrades that are necessary for project operation as

⁴ Id. at subd. (c).

⁵ *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

⁶ *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91.

⁷ *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011.

⁸ Id.

part of the project description. In *San Joaquin Raptor*, the court overturned an Environmental Impact Report ("EIR") for a housing development because the EIR's project description failed to include an offsite sewer expansion that was necessary to serve the project. The Court held that even though a separate EIR was prepared for the sewage expansion, the housing development's project description was inadequate, and that rendered the analysis in the EIR inadequate.⁹ As in *San Joaquin Raptor*, the Energy Commission must study the environmental impacts associated with the transmission line and substation expansion. Without this expansion, the Solar One Project has no independent utility. The Solar One Project Description must include the transmission upgrades necessary to deliver the power to the grid.

In *Tuolumne County Citizens*, the Court evaluated whether a street improvement had to be studied in the same EIR as an adjacent commercial development. Finding the street improvement necessary for the commercial development to operate, the Court reasoned that when one activity is an integral part of another activity, the combined activities are within the scope of the same CEQA project.

One way to evaluate which acts are parts of a project is to examine how closely related the acts are to the overall objective of the project. The relationship between the particular act and the remainder of the project is sufficiently close when the proposed physical act is among the "various steps which taken together obtain an objective."¹⁰

It is without question that the Energy Commission will need to study the transmission upgrades and the substation expansion within the same CEQA review.

III. SCOPE OF ENVIRONMENTAL IMPACTS OF TRANSMISSION UPGRADES

At this time, the applicant has provided minimal information about the impacts of the transmission line and substation expansions needed for the Solar One plant to operate. The primary source of information on transmission impacts is contained in the

⁹ *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713.

¹⁰ *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214.

Application for Certification's ("AFC") Appendix EE, "Environmental Summary Report for the Proposed Lugo-Pisgah 500kV Transmission Line and Substation Upgrades" ("Summary Report"). According to the Summary Report, the information was derived from public documents that describe resource conditions in the area of the transmission upgrades and from online GIS information. By the Applicant's own admission, the Summary Report is only intended to provide "general estimates as to environmental impacts" associated with the transmission upgrades.¹¹

The transmission upgrades needed for the entire 850 MW Project consist of 57.1 miles in an existing transmission right of way ("ROW") and 9.8 miles of new ROW.¹² The existing 220kV structures in the ROW will be removed and replaced with 500kV towers. Most of the structure sites will require minor to substantial grading and new or re-developed access and spur roads. All of this will result in enormous impacts to the wildlife in the area. The transmission upgrades required for the temporary 275 MW interconnection will also result in grading and ground disturbance of areas around the Pisgah substation and possibly the Eldorado-Lugo 500 kV line. Construction of transmission and utility lines and associated roads are considered one of the top ten threats to the desert tortoise and its habitat.¹³

Federally threatened desert tortoises were found on the transmission route and roughly 80% (4,720 acres) of the impacted area is suitable habitat for desert tortoise.¹⁴ In all, ten special status species were detected along the proposed transmission route including the desert tortoise, the short-joint beavertail cactus, the white-margined beardtongue, the Mojave fringe-toed lizard, western burrowing owl, golden eagle, American badger, horned lark, yellow warbler and loggerhead shrike. The Project also lies near the Pacific flyway and is a stopover for migratory birds. During biological surveys in 2007 and 2008, 36 bird species were sighted.

The transmission line will result in significant air quality impacts as well. The line will be located in the Mohave Desert Air Quality Management District

¹¹ SES Environmental Summary Report – Lugo – Pisgah No. 2 500 kV Transmission Line and Substation Upgrades Ecosphere Environmental Services, November 21, 2008, p. 8.

¹² *Id.* at p. 6.

¹³ U.S. Fish & Wildlife Service, Draft Revised Recovery Plan for the Mojave Population of the Desert Tortoise (*Gopherus agassizii*), Appendix A. Accessed at: www.fws.gov/Nevada/desert_tortoise/documents/recovery_plan/DraftRevRP_Mojave_Desert_Tortoise.pdf

¹⁴ SES Environmental Summary Report – Lugo – Pisgah No. 2 500 kV Transmission Line and Substation Upgrades Ecosphere Environmental Services, November 21, 2008, p. 19.

which is in non-attainment for ozone, PM10 and PM2.5 under the California Ambient Air Quality Standards and the National Ambient Air Quality Standards. The Project will result in the emission of exhaust, dust and other particulate emissions during grading and construction.

At the time of the publishing of the Environmental Summary in November 2008, impacts to cultural resources had not been studied at all. The Environmental Summary estimates that "a number of prehistoric cultural resources will be identified during inventory."¹⁵ These must be surveyed and a consultation under the National Historic Preservation Act must be completed, if necessary.

There are also a number of potential impacts associated with visual resources, land use, noise, traffic and transportation, transmission line safety and nuisance, soil and water resources, hazardous materials management, contamination and worker safety. Additional information about the existing environmental conditions and the applicant's constructions plans is needed in these areas so that the environmental impacts can be assessed:

IV. CONCLUSION

The Energy Commission, as lead agency, must evaluate the environmental impacts of the transmission upgrade as part of the Stirling Solar One Project. However, before this, it is incumbent upon the Applicant to provide sufficient data to analyze these impacts. Study of the Project should be put on hold until the Applicant provides adequate data for an analysis of the transmission impacts necessary for full build-out of the Solar One Project. If the Energy Commission failed to study and mitigate the impacts from this upgrade, the Commission would violate the requirements of the California Environmental Quality Act.

Sincerely,

/s/

Loulana A. Miles

LAM:cnh

¹⁵ Id. at p. 24.

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SES SOLAR ONE PROJECT Docket No. 08-AFC-13

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SES SOLAR ONE PROJECT

Docket No. 08-AFC-13

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